

Holding OSCE states accountable for implementing human dimension commitments: the role of National Human Rights Institutions in independent evaluation reporting

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Holding OSCE states accountable for implementing human dimension commitments

The role of National Human Rights Institutions in independent evaluation reporting

Information

All states participating in the Organization for Security and Co-operation in Europe (OSCE) have committed themselves to human rights and democracy norms. In the OSCE there is currently no regular, country-based system to monitor the implementation of these commitments. Therefore Switzerland initiated an independent evaluation of national implementation during its OSCE chairmanship in 2014. Germany consolidated this process in 2016. With this paper, the German Institute for Human Rights wants to share its experiences with the evaluation process and give food for thought on how other National Human Rights Institutions can make use of it.

All OSCE participating States have agreed that lasting security cannot be achieved without respect for human rights and functioning democratic institutions. They have committed themselves to a comprehensive catalogue of human rights and democracy norms. These form the basis of what the OSCE calls the “human dimension” of security.¹

In contrast to the United Nations' or Council of Europe's framework for the protection of human rights, in the OSCE there is currently no regular, country-based system to monitor the implementation of the OSCE's human dimension commitments. Given the current political situation in the OSCE region, it is not likely to achieve consensus among all 57 participating states on establishing such a reporting system on the human dimension. However, holding governments accountable on

their human rights and democracy commitments seems to be more important than ever.²

OSCE human dimension commitments: thematic areas³

- Elections, democratic institutions and rule of law
- Human rights applicable to all (civil and political; economic, social and cultural rights)
- Human rights with a focus on specific groups (national minorities, Roma and Sinti, indigenous populations, refugees and migrants, persons with disabilities and other groups)
- Equality, tolerance and non-discrimination
- Threats to human security (gender-based violence, trafficking in human beings, drug and arms trafficking, terrorism)

During its OSCE chairmanship in 2014, Switzerland therefore initiated a methodology for an independent evaluation of its own implementation of human dimension commitments and submitted the first such report on the situation in Switzerland⁴. The methodology also involves civil society and government institutions who comment on the report. The Serbian OSCE chairmanship in 2015 took up the Swiss example and presented its own independent evaluation report.⁵ During the German chairmanship in 2016, the reporting methodology was further developed.⁶ Such reporting is desirable to become good practice for future OSCE chairmanship countries or any participating state.

Independent reporting can strengthen the human dimension and thus the OSCE as a regional actor

for conflict prevention and resolution. Various forms of and occasions for independent reporting on the implementation of human dimension commitments are conceivable. Examples would be: Reporting of one participating state on the occasion of its chairmanship or on other occasions; or joint reporting of several participating states on one single topic that is particularly relevant to the OSCE region at a particular time.

National human rights institutions (NHRIs) play a crucial role in promoting and monitoring effective implementation of international human rights standards at the national level. In Copenhagen in 1990, OSCE participating states pledged to "... facilitate the establishment and strengthening of independent national institutions in the area of human rights and the rule of law..."⁷. NHRIs thus have an important role to play in developing and consolidating independent reporting in the OSCE region.

Objectives of independent evaluation reports

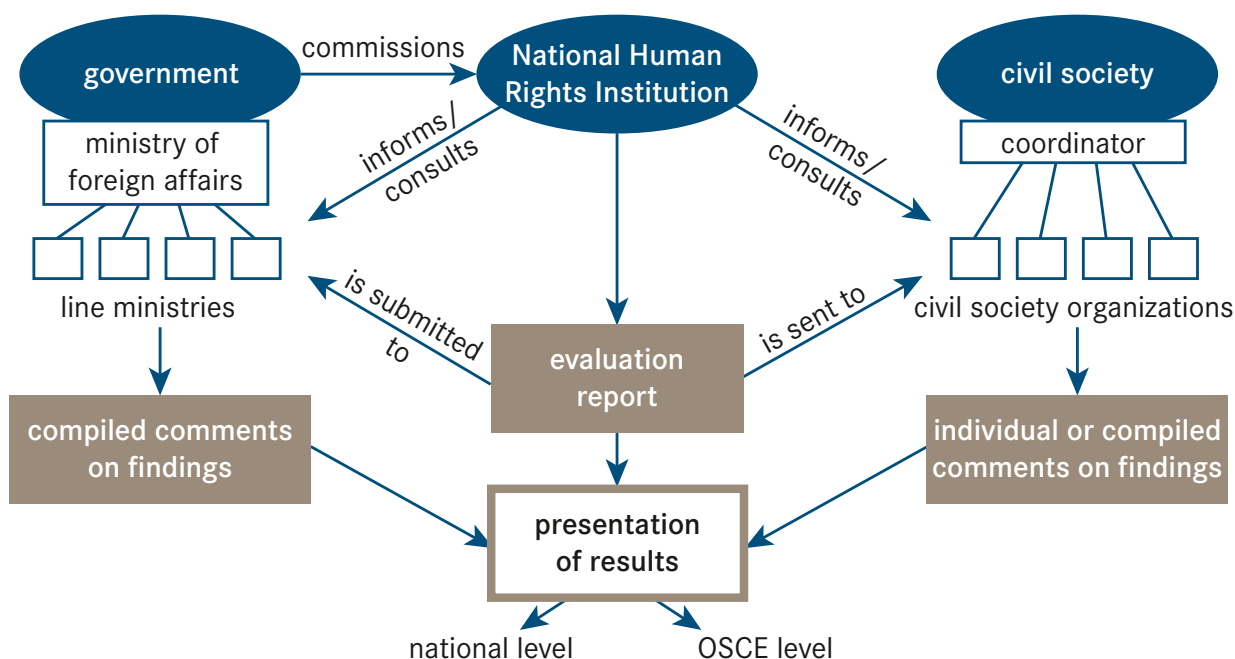
Independent evaluation reporting of the human rights situation in a specific country has an internal, domestic as well as an external, OSCE-related dimension:

Domestically, the evaluation process aims at raising national awareness of OSCE human dimension

commitments and – even more importantly – at holding governments of participating states accountable on the commitments' implementation. The reporting process, which involves a variety of actors, is also an objective in itself, as it strengthens democratic dialogue at national level between the NHRI, government agencies and civil society. The evaluation report aims to offer a meaningful picture of the implementation of OSCE human dimension commitments, and thus of the human rights and democratic situation in the country. Different from human rights treaty reporting, where the government's state report forms the basis of the evaluation by the treaty body, here the government is required to directly respond to the NHRI's findings on current challenges regarding human rights and democracy in the respective country. Moreover, civil society is invited to comment on an equal footing with the government. This opportunity is a crucial element of the reporting process (for more information on the process see chart).

At OSCE level, the overall objective of the independent evaluation reporting of participating states is to strengthen the effectiveness of the human dimension within the OSCE because lasting security cannot be achieved without respect for human rights and functioning democratic institutions.

Actors involved in the national evaluation process



The *ministry of foreign affairs (MFA)* commissions the National Human Rights Institution with carrying out the independent evaluation on the state's current status of implementing OSCE human dimension commitments. At the OSCE meetings and fora, e.g. the annual Human Dimension Implementation Meeting, the MFA is involved in presenting the report to other participating states.

Various ministries and government agencies competent for dealing with topics evaluated in the NHRI's report comment on each of its findings and conclusions. One ministry (in the case of Germany, the MFA) should act as a focal point and coordinate the government comments.

The *National Human Rights Institution (NHRI)* is responsible for carrying out the independent evaluation of the human rights situation (methods could include desk research, data collection, interviews), drafting the report and submitting it to the ministry of foreign affairs

Civil society organizations (CSO) interested in topics evaluated comment on the findings and conclusions of NHRI's independent evaluation report. The comments from civil society are to be collected by a coordinating body or person which could be placed at either a civil society organization, the MFA or the NHRI.

Supporting actors at OSCE level

At OSCE level, there are two further actors whose engagement could contribute to the success of independent evaluation reporting: the OSCE Office of Democratic Institutions and Human Rights and the European Network of National Human Rights Institutions.

The *OSCE Office of Democratic Institutions and Human Rights (ODIHR)*⁸ has not been an actor in the independent evaluation reports submitted by Switzerland, Serbia and Germany. However, given ODIHR's important mandate to help OSCE participating states to "ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and ... to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society,"⁹ ODIHR can play an important role in promoting independent

state reporting at OSCE level. It is recommended to consult the organization before or during the reporting process. Further, at the request of a participating state wishing to undertake an independent evaluation process, ODIHR could help to develop capacities of actors involved and hold events on independent state reporting on the human dimension.

The *European Network of National Human Rights Institutions (ENNHRI)*¹⁰ brings together 40 National Human Rights Institutions Europe-wide. Its goal is to enhance the promotion and protection of human rights across the European region. ENNHRI cooperates with OSCE/ODIHR in a variety of activities. ENNHRI offers a space to exchange good practice between NHRIs in the OSCE region willing to engage with OSCE commitments. One of them is the annual NHRI Academy,¹¹ which brings together staff from NHRIs across the OSCE area.

Steps in the evaluation process

Identifying actors

When planning the evaluation, the internal and external dimensions of the evaluation process, as well as the variety of actors involved in the reporting process, have to be taken into consideration:

- Which national actors should be involved and informed before starting the process?
- What specific interests do the various actors pursue by being involved in the reporting process?
- To which audience is the report to be presented and by whom?

A joint statement of purpose of the evaluation project, elaborated hand-in-hand by the NHRI and the MFA, could help to clarify the aims of the process and roles of the different actors involved from the beginning. In Germany, information on the evaluation project and its purpose was presented on the websites of the different actors (MFA, NHRI, civil society coordinator) from the beginning.

Selecting topics

OSCE human dimension commitments cover a broad range of subjects to various extents. Commitments vary in the level of detail from a few general clauses to specific recommendations on legislative, institutional, preventive and promotional measures. The evaluation process should therefore start by identifying topics to be evaluated.

The process of topic selection is crucial for the evaluation process in two ways. Firstly, the selected topics must be covered by specific OSCE human dimension commitments and be relevant for the democratic and human rights situation in the respective country. Secondly, the independent nature of the evaluation should also be reflected in the process of topic selection: While consultation with the government and civil society might be helpful for the NHRI to identify relevant aspects for the evaluation, the final decision on topics should reside with the NHRI.

When selecting topics, the following three steps could be considered:

Step 1: Reflection of OSCE human dimension commitments and ODIHR key activity areas (see box on page 1)

Step 2: Analysis of current human rights and democracy issues in the respective country:

- Human rights and democracy issues in current public debate
- Human rights and democracy issues that have recently seen significant (positive or negative) developments in legislation, policies or in frequency of occurrence
- Human rights and democracy issues highlighted by civil society or government in potential consultation process
- Areas of concern that have been identified by national, regional or international human rights bodies (e.g. in monitoring reports, state reporting procedures or in jurisprudence)

Step 3: Selection of topics for the evaluation:

- Comparison of relevant national human rights and democracy issues with respective human dimension commitments, including detailedness of commitments
- Selection of a variety of topics or focussing on a few? (This may depend on situation on the ground and time and resources available for the evaluation)
- Additional criteria for topic selection, e.g. availability of data and information on the situation on the ground

Evaluation topics in Germany

The German Institute for Human Rights decided to select at least one topic from each of the key OSCE commitment areas. The evaluation report of 2016 covers:

- Elections: voting rights of persons with disabilities and their right to run in elections
- Transparency and democratic institutions: parties' and representatives' incomes and political interest representation
- Tolerance and non-discrimination: combating discrimination and hate crimes
- Gender equality: collection of data to combat violence against women; equal remuneration; women, peace and security
- Combating trafficking in human beings

Choosing methods and standards for the NHRI report

Politically binding OSCE commitments are standard for evaluating the status of implementation of the selected topics. Often, their content will be connected to international human rights treaty standards.

According to the political nature of the commitments, NHRIs may follow a process-oriented perspective, rather than a violations-based approach, by using the following questions:¹²

- What is the current legal, institutional and policy framework and the actual situation in regard to the selected topic in the country?
- Do competent authorities acknowledge that the respective situation is problematic in light of relevant OSCE commitments?
- Did competent authorities take steps to change the relevant legislation or practices and/or take other actions to tackle the criticized situation?
- Are the steps taken in line with relevant OSCE commitments?
- What is the impact of measures taken? Are the steps taken effective?
- Are there recommendations to the government for further steps?

To answer these questions, the following methods can be used:

- Desk research on government and parliament statements, publicly available data, studies, evaluations from national and international human rights committees and treaty bodies, jurisprudence
- Data collection by surveying government agencies and civil society organizations
- Conducting expert interviews
- Collecting evidence on the ground, e.g. victims statements

Coordinating government and civil society commenting

After finalising its evaluation report – in Germany, this took around five months – the NHRI publishes the report on its website and submits it to the government and civil society for comment within a specified timeframe – in Germany, comments were coordinated, collected and edited within four months.

Government comments will typically be coordinated by the MFA. Comments from civil society organizations (CSO) can be coordinated either by a CSO, e.g. a member of the civic solidarity platform¹³, by the NHRI or compiled by the MFA.

The cooperation of the responsible government departments and of civil society is crucial for the evaluation's success. Timely and direct reactions to the evaluation's findings of the NHRI demonstrate a real, vivid democratic dialogue within a state. Despite the possibly short timeframe, civil society and government should therefore have an opportunity to comment meaningfully on the report (see box on page 7).

Organizing the Publishing and presenting of the evaluation

The results of the evaluation process (report and comments) should be published and presented at both national and OSCE levels (side event at the OSCE Human Dimension Implementation Meeting, OSCE/ODIHR Human Dimension Seminar). Preferably, all results of the process (NHRI evaluation report, governments' response to the report and comments from civil society) should be presented together and jointly by the three actors.

Presentation of the German evaluation in Berlin and Warsaw

Side event at the Human Dimension Implementation Meetings in Warsaw (September 2016): The GIHR hosted a 90-minute side event to present the evaluation process and the results to other OSCE member states. Speakers included the head of the OSCE chairmanship taskforce from the German MFA, the Chairperson of the European Network of NHRIs (ENNRHI) and a representative of the civic solidarity platform. Around 20 persons attended the event.

When planning a side event, ODIHR's registration procedures and timelines should be strictly observed, as time slots for side events are much in demand. To ensure good attendance, a lunchtime slot for the side event is recommended.

Expert conference in Berlin (October 2016): At national level, the GIHR organized a one-day expert conference with around 90 participants. After a first panel in plenary session, where the results and the rationale of the process were presented and discussed, the meeting split into two thematic panels. In the panels, experts from the OSCE and ODIHR as well as national policy makers and civil society discussed the results and further steps regarding tolerance and non-discrimination as well as women, peace and security. Participants especially welcomed the thematic panels and the interaction of the OSCE level with national policy makers.

Both events were funded by the German Federal Foreign Office.

Actors might therefore consider:

- Publishing the evaluation report and compiled government and CSO comments in the national language and in an official OSCE language
- Presenting the evaluation report and compiled government and CSO comments on NHRI and MFA websites and disseminating this widely to civil society and the general public
- Holding a national event (expert meeting, conference) to present the results of the evaluation process and discuss further steps on national level
- Presenting the results of the evaluation process at OSCE level (side event at the OSCE

Human Dimension Implementation Meeting, OSCE/ODIHR Human Dimension Seminar)

In Germany, those four steps were taken (see box on page 5).

Follow-up

To ensure sustainability of the evaluation process, follow-up activities even after the chairmanship of the respective countries are important. So far, the methodology developed and used by Switzerland, Serbia and Germany does not involve any follow-up mechanisms to the findings and the recommendations made in the evaluation report. Activities remained limited to the chairmanship. Although the government is held accountable already by having to directly reply to the report's conclusions, they are not held accountable in terms of actually removing the human rights or democracy shortcomings identified. Such follow-up instruments are still lacking at national as well as at OSCE levels. This can be seen as a point for improvement to the methodology. Participating states and NHRIs are invited to elaborate further on this issue.

The following follow-up measures could be considered:

- In the frame of compulsory reporting to human rights bodies of the UN, EU or Council of Europe, the government of the OSCE participating state could also report on measures taken to eliminate shortcomings identified in the voluntary evaluation report on the implementation of OSCE human dimension commitments.
- The government of the participating state could report on the evaluation's findings and the measures taken to eliminate shortcomings identified in the frame of the OSCE Human Dimension Committee (HDC) sessions. The HDC meets at least once a month to hear specialists' presentations; in addition to that the participating States report on the implementation of the human dimension commitments. One essential part of the HDC's work is to prepare decisions for the Permanent Council and the annual Ministerial Council.
- The government of the participating state could also report to the General Committee on Democracy, Human Rights and Humanitarian Questions (Third Committee) of the OSCE Parliamentary Assembly. The Third General

Committee addresses humanitarian and human rights-related threats to security, serving as a forum for examining the potential for co-operation within these fields.

Conclusions

In 2016, the German Institute for Human Rights (GIHR) was commissioned to independently evaluate how Germany implements OSCE human dimension commitments. Having been much more focused on UN and Council of Europe human rights instruments and mechanisms, the GIHR intensified its work on OSCE commitments in the course of the project. Though the evaluation process was challenging for all actors involved due to the short timeframe and broad variety of themes covered, it was assessed a worthwhile exercise by civil society, government and the GIHR itself. It leads to the conclusion that an independent evaluation process with the interaction of the NHRI, government and civil society is an eligible tool to strengthen the OSCE human dimension commitments at national and OSCE level.

At national level, the government is required to directly respond to the NHRI's findings on current challenges regarding human rights and democracy in the respective country. Compared to UN human rights treaty monitoring, this results in a very timely and direct dialogue on current human rights challenges. Furthermore, the important role of civil society in commenting on the report on an equal footing with government enhances the democratic nature of the evaluation process in the spirit of OSCE human dimension commitments.

At OSCE level, participating states that underwent an independent evaluation demonstrate their commitment to the human dimension and the message that lasting peace and security cannot be achieved without democracy and human rights.

The reporting methodology should therefore be actively promoted at a variety of occasions and fora. NHRIs, civil society and governments of participating states are welcome to visit the GIHR website (<http://www.institut-fuer-menschenrechte.de/menschenrechtsinstrumente/osze/projekt-osze-evaluierungsbericht/>) or contact the GIHR for any further possible requests.

Outcomes and views on the German evaluation process

The 110-page evaluation report by the German Institute for Human Rights (GIHR)¹⁴ received 14 comments by various civil society organizations on different topics of the report that were then compiled into a summary report.¹⁵ While many were generally approving of the GIHR's findings, they also contained well-argued criticism on specific issues and additional aspects that should have been covered by the evaluation. CSOs explicitly welcomed the independent and critical evaluation and the invitation for civil society to comment on the findings.

Hugh Williamsen, director of the Europe and Central Asia division of Human Rights Watch on D+C Development and Cooperation (www.dandc.eu), concluded:

“Unlike the United Nations, the OSCE has no mechanism for monitoring human rights in its member countries, which include European nations, the USA, Canada and countries of the former Soviet Union. This is a major problem in a region where serious human-rights violations and restrictions on basic freedoms are common. For this reason, Germany's decision to commission this study – a voluntary monitoring of its own human-rights performance – is most welcome.”

The government presented a compiled 30-page commentary by the responsible ministries on the independent evaluation report.¹⁶ The commentary welcomes the constructive overall tenor of the report and its nuanced account of developments in recent years. It assesses in

detail points of criticism raised in the report and presents the government's opinion.

During the presentation of the report at the Human Dimension Implementation Meeting (HDIM) in Warsaw, the responsible government official in the German Ministry of the Interior commented:

“Initially, I was skeptical of having yet another reporting process augmenting the existing reporting duties in the UN and Council of Europe. But I must say that the result of the evaluation exercise was most valuable, choosing our National Human Rights Institution with its knowledge of the national legal and institutional framework to carry out the evaluation on the basis of the very up-to-date situation in Germany. The balanced report – which focuses on the most relevant OSCE commitments instead of covering a broad range of topics, but analyses these in detail – and the swift process can facilitate a constructive national dialogue on specific human rights challenges.”

On the occasion of the expert conference in Berlin where the results of the evaluation process were presented, Michael Windfuhr, deputy director of the GIHR, concluded:

“This type of process was new for us as well, and it was most interesting receiving immediate and comprehensive feedback from government and civil society on the GIHR's analysis of the human rights situation in Germany – even more, as this feedback was very concrete and differentiated.”

- 1 <http://www.osce.org/odihr/what-is-the-human-dimension> (last accessed: May 2, 2017).
- 2 OSCE (2011): Human Dimension Commitments Volume 1, Thematic Compilation. 3rd Edition. Warsaw. <http://www.osce.org/odihr/76894?download=true> (last accessed: May 2, 2017).
- 3 The idea for holding participating States accountable for their commitments originally came from civil society groups of the OSCE region.
- 4 Swiss Center of Expertise in Human Rights (SCHR) (2014): Self-Evaluation Swiss OSCE Chairmanship. Bern. https://www.eda.admin.ch/content/dam/eda/en/documents/publications/InternationaleOrganisationen/osze/20150803-Self-Evaluation-OSCE%20-Chairmanship_DE.pdf (last accessed: May 2, 2017).
- 5 Institute for Social Sciences, Belgrade / Commissioner for the Protection of Equality (2015): Self Evaluation of the Level of Implementation of OSCE Commitments in Serbia. Belgrade. http://www.mfa.gov.rs/en/images/Finalna_verzija_EN_1_5.pdf (last accessed: May 2, 2017).
- 6 German Institute for Human Rights (2016): Implementation of Selected OSCE Commitments on Human Rights and Democracy in Germany. Independent evaluation report on the occasion of the German OSCE Chairmanship 2016. Berlin. http://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/Publikationen/Weitere_Publikationen/Implementation_of_Selected_OSCE_Commitments_on_Human_Rights_and_Democracy_in_Germany_09_2016.pdf (last accessed: May 2, 2017).
- 7 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference of Security and Cooperation in Europe (CSCE), para (27). <http://www.osce.org/odihr/elections/14304?download=true> (last accessed: May 2, 2017).
- 8 <http://www.osce.org/odihr/what-we-do> (last accessed: May 2, 2017).
- 9 Document of the Helsinki Summit of the Conference for Security and Cooperation in Europe (CSCE) 1992, para VI (2). <http://www.osce.org/mc/39530> (last accessed May 4, 2017).
- 10 <http://ennhri.org/> (last accessed: May 2, 2017).
- 11 <http://www.ennhri.org/NHRI-Academy-overview> (last accessed: May 2, 2017).
- 12 As developed by the Swiss evaluation (l.c.) and used also in Serbia and Germany.
- 13 <http://www.civicsolidarity.org/> (last accessed: May 2, 2017).
- 14 <http://www.institut-fuer-menschenrechte.de/publikationen/show/implementation-of-selected-osce-commitments-on-human-rights-and-democracy-in-germany/> (last accessed: May 2, 2017).
- 15 http://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/PDF-Dateien/Sonstiges/Summary_CS_Comments_Evaluation_Report.pdf (last accessed: May 2, 2017).
- 16 http://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/PDF-Dateien/Sonstiges/Commentary_Ministries_on_Evaluation_Report_2016.pdf (last accessed: May 2, 2017).

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